

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT ILLINOIS EASTERN DIVISION**

Invent WorldWide Consulting, LLC
An Illinois Limited Liability Company;
Plaintiff,

vs.

AbsolutelyNew, Inc., a California Corp.;
Jose Miguel Castello, Individually and
d/b/a "SellMyInventionIdea.com"; Michael
Torbert, Individually and d/b/a Semper Fi
Web Design, and Unknown John Does;
Defendants.

**DEFENDANTS' SUPPLEMENTAL
MEMORANDUM AND DECLARATION IN
SUPPORT OF DEFENDANTS' MOTION
TO DISMISS [FRCP 12(B)(6)]**

Case No. 11-CV-01619

Judge Rebecca Pallmeyer

Magistrate Judge Arlander Keys

I. INTRODUCTION

Defendants JOSE MIGUEL CASTELLO ("Castello") and ABSOLUTELYNEW, INC. ("ANI") submit this Supplemental Memorandum in Support of their Motion To Dismiss the Complaint of Plaintiff, INVENT WORLDWIDE CONSULTING, LLC ("IWC") under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted.

II. ARGUMENT

Defendants just recently discovered that in contradiction to its Complaint and every pleading and argument it has made in this litigation, Plaintiff does not have a registered Trademark of any kind. The original application was denied and then abandoned. The application has only recently been revived on October 6, 2011. The current application is made in the name of J.B. & B. & Associates, not Plaintiff. Because the new application will not relate back to the original filing there is no possibility that Defendants will have infringed any claimed trademark.

Defendants request that the court take judicial notice of the relevant pages on the official website of the United States Patent and Trademark Office for the complete file information: <http://tdr.uspto.gov/search.action?sn=85048631#>.

III. CONCLUSION

For the foregoing reasons, Defendants request that this Court dismiss all counts of the Complaint with prejudice and that the court set briefing regarding sanctions against Plaintiff and its counsel and for recovery of full costs of defense to be awarded to Defendants.

Respectfully Submitted,

Dated: October 11, 2011

COUNSEL FOR DEFENDANTS
JOSE MIGUEL CASTELLO AND
ABSOLUTELYNEW, INC.

/s/

Anthony R. Flores
tflores@absolutelynew.com
650 Townsend Street, Suite 475
San Francisco, CA 94103
(415) 865-6200 ext. 1123

PROOF OF SERVICE

I am employed in the City and County of San Francisco, State of California. I am over the age of eighteen years and not a party to the within action; I am employed by AbsolutelyNew, Inc. and our business is located at 650 Townsend Street, Suite 475, San Francisco, California 94103.

On October 11, 2011, I caused to be served a true and correct copy of: **DEFENDANTS' SUPPLEMENTAL MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS [FRCP 12(B)(6)]** on Plaintiff by placing a true and correct hard copy thereof enclosed in via sealed envelope to the addressed as follows:

Robert W. Gray, Sr.
The Gray Law Group, Ltd.
9219 S. Indianapolis Blvd., Suite A
Highland, Indiana 46322
Fax: (866) 277-8885 Email: robertgray2@gmail.com

— (BY MAIL) The envelope was mailed with postage thereon fully prepaid U.S. Mail. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. Postal Service on that same day. I am aware that on motion of a party served, service is presumed invalid if the postal cancellation date is more than one day after date of deposit for mailing an affidavit.

— (BY PERSONAL SERVICE) I delivered such envelope by hand to the office of the addressee listed above.

— (BY EXPRESS MAIL/OVERNIGHT DELIVERY) I deposited the foregoing during normal business hours with an authorized service providing and ensuring overnight delivery of the foregoing and with the full postage or charges for such fully prepaid

XX Via E-Mail to the e-mail address of the addressee listed above in the CM/ECF electronic filing system of the U.S. District Court.

— Via Facsimile to the fax number of the addressee listed above.

XX (FEDERAL) I declare that I am a member of the bar of the Federal court.

Date: October 11, 2011

/s/
Anthony R. Flores